

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ERNST HOFFMAN,

Plaintiff,

v.

**WILLIAM DRATEL, SHARYN LAWALL
DRATEL,**

Defendants.

Civ. No. 13-2828 (WJM)

ORDER

This matter comes before the Court on Plaintiff Ernst Hoffman's motion for default judgment against Defendants William Dratel and Sharyn Lawall Dratel pursuant to Fed. R. Civ. P. 55(b)(2); and it appearing that default was entered by the Clerk of the Court against Defendants on June 21, 2013 for their failure to plead or otherwise defend in this action; and Plaintiff having thereafter moved for default judgment against Defendants in the amount of \$368,759.10 on July 16, 2013 based on the terms set forth in a one-page letter which appears to be signed by all parties (the "Default Judgment Motion") (ECF No. 6); and it appearing that at the time of that filing, Plaintiff failed to serve Defendants with copies of the Default Judgment Motion; and the Court noting that Plaintiff's one-page affidavit of service filed with this Court on August 16, 2013 – indicating that Defendant William Dratel was served with a "Request to Enter Default" on July 30, 2013 – fails to adequately demonstrate that Defendants were otherwise served with copies of Default Judgment Motion; and the Court further noting that even after

obtaining entry of default, parties are not entitled to the subsequent entry of default judgment as of right. *Hritz v. Woma Corp.*, 732 F.2d 1178, 1180 (3d Cir.1984); and that “[b]efore imposing the extreme sanction of default, [the Court must consider]: (1) whether the party subject to default has a meritorious defense, (2) the prejudice suffered by the party seeking default, and (3) the culpability of the party subject to default.” *Doug Brady, Inc. v. N.J. Bldg. Laborers Statewide Funds*, 250 F.R.D. 171, 177 (D.N.J. 2008) (citing *Emcasco Ins. Co. v. Sambrick*, 834 F.2d 71, 74 (3d Cir. 1987)); and entry of the extreme sanction of default being within the discretion of the Court. *Hritz* at 1180 (3d Cir.1984); and under the circumstances of the present motion, in which Plaintiff seeks over \$368,000 from Defendants based on a one-page document, and has failed to adequately demonstrate that the present Default Judgment Motion was served upon Defendants; and for good cause appearing,

IT IS on this 3rd day of September 2013, hereby,

ORDERED that Plaintiff’s motion for default judgment in favor of Plaintiff Ernst Hoffman and against Defendants William Dratel and Lawall Dratel is **DENIED** without prejudice.

s/William J. Martini
WILLIAM J. MARTINI, U.S.D.J.